PART IV

Section 1—C

GENERAL STATUTORY RULES AND STATUTORY ORDERS ISSUED BY THE CENTRAL GOVERNMENT AND ORDERS MADE BY THE PRESIDENT AND REPUBLISHED BY THE STATE GOVERNMENT.

ELECTION COMMISSION, INDIA.

Talkatora Road,
NEW DELHI, 1.
Dated the 5th December, 1967.

NOTIFICATION.

No. 82/MY/1/67.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 20th October 1967, by the High Court of Mysore at Bangalore in Election Petition No. 1 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 20th day of October, 1967.

Before

THE HON'BLE MR. JUSTICE G. K. GOVINDA BHAT.

Election Petition No. 1 of 1967.

A. C. Srikantiah Son of A. G. Chunchegowda, aged 31 years, Arakere, P.O. *via*., Mandya, Srirangapatna Taluk. ... *Petitioner.*

(By Sri V. S. Malimath)

Vs.

1. B. Doddabore Gowda, son of Boregowda, aged about 41 years, Yettagadahalli, Mandya Taluk.
2. L. Narasimhaswamy, son of Linganniah, aged about 30 years. Municipal Councillor, Srirangapatna. .... *Respondents.*
3. A. S. Bandi Siddegowda, B.Sc., LL.B., aged about 37 years, Arakere P. O. *via*., Mandya, Srirangapatna.

Respondent No. 1 by Sri S.G. Doddakalegowda and Respondents 2 in person and 3 being absent and unrepresented.

Election petition filed by the Petitioner under Section 81 of the Representation of the People Act, 1951 challenging the Election of the Respondent No. I, to the Mysore Legislative Assembly from Srirangapatna Constituency in

the 1967 General Elections and praying that (1) the election of Respondent No. 1 as Member of the Mysore Legislative Assembly from Srirangapatna Constituency in the 1967 General Elections be declared as void; (b) that the petitioner be declared duly elected as Number of the Mysore Legislative Assembly from Srirangapatna Constituency in the 1967 General Elections and; (c) That the cost of this petition be awarded to the Petitioner.

This Election Petition coming on for trial on Monday, 18th, Tuesday 19th, Wednesday 20th, Thursday 21st, Friday 22nd, Monday 25th, Wednesday 27th, days of September 1967 and Thursday 5th, Friday 6th, days of October 1967, in the presence of Sri V. S. Malimath, Advocate for the Petitioner, Sri V. Krishna Murthy and Sri S. G. Doddakalegowda, Advocate for Respondent No. 1 and Respondent No. 2 and Respondent 3 being absent and unrepresented, and this Election Petition having stood over for consideration, the Court made the following order this 20th day of October 1967.

ORDER

At the General Elections to the Mysore Legislative Assembly held in February 1967, the Petitioner and Respondents 1 to 3 contested the Election for the seat from No. 101 Sreerangapatna Assembly Constituency. The poll took place on 15th February 1967 and counting was held on 22nd February 1967 at the Taluk Board Office, Sreerangapatna. As a result of the said count, it was found that the candidates had secured the following number of valid votes:

Respondent No. 1	....	13,882
Petitioner	....	13,795
Respondent No. 2	....	4,332
Respondent No. 3	....	9,651
The rejected votes were		4,303.

Before the declaration of the result, the petitioner gave an application to the Returning Officer for recount of the votes and that application was granted; the recount was held on 23rd February 1967 from 11-30 A.M. till 1-30 P.M. As a result of the recount, Respondent No. 1 secured 13,883 valid votes and Petitioner 13,794 valid votes. There was no change in the number of votes secured by the other two candidates and the total number of rejected votes. Respondent No. 1 having secured a majority of votes, he was declared elected. On April 3, 1967 the petitioner preferred the above election petition challenging the election of Respondent No. 1; he has prayed for a declaration that the election of Respondent No. 1 be declared as void and he (the petitioner) be declared duly elected. The main grounds pleaded by the petitioner in support of his petition are :

(1) That 38 voters specified in Schedule 'E' to the Election Petition were dead before the date of the poll and that votes were cast by impersonation in the names of the said dead persons

(2) That there is discrepancy of 52 votes between the total number of ballot papers issued at all the polling stations and the number of ballot papers counted,

(3) That though recount was ordered there was merely a physical recount of the ballot papers but no scrutiny was done and opportunity to the Petitioner to raise objections to the validity of the ballot papers was not afforded, and

(4) That there was improper acceptance of about 1,500 invalid votes in favour of Respondent No. 1 and improper rejection of about 1,000 valid ballot papers of the Petitioner by the Assistant Returning Officer and the counting staff.

Respondents 2 and 3 remained absent and did not contest. Respondent No. 1 filed a written statement denying that there was any improper acceptance or improper rejection of votes or irregularity in the conduct of the count or recount. He denied that the Petitioner has secured a majority of valid votes ; Respondent No. 1 did not dispute the fact that 38 persons specified in Schedule 'E' to the Election Petition were dead on the date of the poll. but he denied that there was any impersonation of the said persons and that he has secured the votes of the dead voters by impersonation. Respondent No. 1 also did not dispute the fact alleged by the petitioner that there was no scrutiny of the valid votes of the candidates at the recount ; he contended that the petitioner having sought recount of rejected votes only, the Returning Officer had ordered recount of the rejected votes besides recount of valid votes of any booth if demanded and that the petitioner did not make any demand for recount of the valid votes of any booth and therefore, there was no need to recount the valid votes of all or any of the booths. Respondent No. 1 contended that the election petition lacks particulars of the disputed ballot papers alleged to have been improperly accepted or rejected and therefore the pleading is defective.

At the time of settlement of issues, the learned counsel for Respondent No. 1 submitted that his client does not dispute the fact that 38 persons mentioned in Schedule 'E' to the election petition were dead on the date of the poll and that no issue need be raised whether the said persons were dead. The Petitioner's learned counsel submitted that the petitioner does not allege any corrupt practice against Respondent No. 1 of having secured votes by impersonation and that all that he contends is that 38 void votes have been received and the said votes will have to be rejected after scrutiny if recount is allowed.

The Following issues were settled :

(1) Does the Election Petition contain an adequate statement of material facts for scrutiny and recount of votes ?

(2) Whether the Election Petitioner has made out a *prima facie* case for inspection, scrutiny and recount of ballot papers ?

(3) Whether the result of the election, in so far as it concerns Respondent No. 1, has been materially affected by improper reception, refusal or rejection of any vote or reception of any vote which is void ?

*(4) Whether the result of the election of Respondent No. 1 has been materially affected by any non-compliance with the provisions of Rule 63(5) of the Conduct of Election Rules, 1961 ?

* [This issue is deleted as per order dated 27th September 1967 on the submission of the learned counsel for the petitioner that he has urged the ground of non-compliance with the provisions of Rule 63(5) of the Conduct of Election Rules, 1961 hereinafter called the 'Rules'-only as a ground for inspection, scrutiny and recount of ballot papers and not as a ground for setting aside the election of Respondent No. 1. Consequent on the deletion of this issue, the next issues Nos. 5 and 6 were renumbered as Issues Nos. 4 and 5].

(4) Whether the Election Petitioner is entitled to a declaration that the election of Respondent No. 1 is void and for a further declaration that the election petitioner is duly elected ?

(5) What reliefs ?

The Petitioner examined seven witnesses besides himself and Exhibits P–1 to P–131 were marked for him. Respondent No. 1 examined two witnesses besides himself and Exhibit R–1 was marked for him.

After evidence was closed and arguments had commenced, the Election Petitioner filed an application

for amendment of his election petition seeking to add two paragraphs as paragraphs IV (12) and IV (13). That application was allowed by order made on 5th October 1967. By the said amendment the petitioner sought to give an explanation for not giving the serial numbers of the disputed ballot papers and that explanation was that the Returning Officer Sri Basaviah had instructed the candidates, their agents and the counting staff not to note down the serial numbers of the ballot papers on the ground that the same would violate the secrecy of the ballot. The petitioner had sought a general recount of the valid ballot papers as also of the rejected ballot papers from all the polling stations. By the amendment, he gave up his case for inspection, scrutiny and recount of the rejected ballot papers and restricted his prayer in respect of the valid ballot papers of Respondent No. 1 from nine polling stations only. Respondent No. 1 filed an additional written statement denying that any instructions were given by the Returning Officer not to note down the serial numbers of the ballot papers by the candidates and their counting agents; but he did not press for any additional issue being raised on the controversial fact. The parties also did not adduce any fresh evidence and the evidence already on records was treated by both sides as sufficient.

Inspection of the marked copies of the electoral rolls relating to the voters mentioned in Schedule 'E' to the election petition was allowed by me. On inspection it was found that ten ballot papers only were issued against the names of the dead voters; the serial numbers of the said ballot papers are given in the joint memo filed by the learned counsel for the parties. In the event of recount of votes being allowed the said ten ballot papers will have to be rejected as void votes. The petitioner has prayed for inspection, scrutiny and recount of the valid ballot papers of Respondent No. 1, received from the nine polling Stations specified in para IV (13) of the election petition for proving that there has been improper reception of invalid votes in favour of Respondent No. 1 and that the petitioner has

received a majority of valid votes. Petitioner's case that he has received a majority of valid votes depends entirely on his making out a *prima facie* case for inspection, scrutiny and recount.

The law is that an order for inspection, scrutiny and recount of ballot papers cannot be granted as a matter of course. In order to justify an order for inspection, scrutiny and recount, two conditions have to be satisfied, *viz.*, (a) the election petition must contain an adequate statement of the material facts on which the petitioner relies in support of his case; and (b) the Court has to be *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary. An order for inspection of ballot papers cannot be granted to support vague pleas made in the election petition not supported by material facts or to fish out evidence to support such pleas. The power to order inspection, scrutiny and recount of ballots vests in the Court as ancilary to the proper determination of the result of an election. The Court will not, on the mere suspicion and demand of an election petitioner and without any extrinsic evidence tending to impeach the regularity of integrity of the official count, order a recount of the ballots, but will require the petitioner to show in advance some evidence of fraud or misconduct of the counting officials reasonably calculated to overcome the *prima facie* presumption of the regularity and correctness of official action. The petitioner therefore has to make out a *prima facie* case that an order for inspection is necessary in the interests of justice in order to decide the dispute.

(1) In Ganji Veerappa *v.* H. Siddaveerappa following the decisions of the Supreme Court in Ram Sewak *v.* H. K. Kidwai (2) and Jagjit Singh v. Kartar Singh, (3) I have stated that it is not sufficient if the election petition

(1) E.P. No. 5 of 1967 decided on 10th August 1967.

(2) A.I.R. 1964 S.C. 1249.

(3) A I.R. 1966 S.C. 773.

contains a vague plea that invalid votes have been improperly accepted or valid votes have been improperly rejected or that the counting and examination of votes was done in a very irregular manner and that the petitioner ought to plead the nature of the objections raised by him or his election agent and the ballot papers to which those objections related.

The petitioner has not given in his election petition the serial numbers of the ballot papers which according to him were improperly received for Respondent No 1. In paragraphs (iii), (iv) and (v) he has alleged the nature of the objections and the total number of the ballot paper that were objected. The Petitioner has not stated that he and his counting agents had no opportunity to examine the ballot papers. By the amendment introduced into the election petition, he has alleged that the Returning Officer instructed the candidates and their counting agents not to note down the serial numbers of the ballot papers and therefore he could not give the serial numbers of the objectionable ballot papers.

P.W. 1 H. C. Shivappa one of the Counting Supervisors and P. W. 3 Basaviah the Returning Officer have both supported the case of the petitioner in this regard. This is what P.W. 3 has stated:

> " Before counting started, I read out the relevant rules regarding the maintenance of secrecy of ballot. I had told them that it is not permissible to note down the serial numbers of the ballot papers."

In Cross Examination the said witness has stated:

> " The instructions that I gave regarding the secrecy of the ballot papers apply not only to the counting staff but also to the counting agents."

P.W. 1 Shivappa the counting Supervisor has stated:

> "On instructions to maintain secrecy of ballot, I did not allow the counting agents to note the serial numbers of the ballot papers."

Respondent No. 1 has not suggested any motive for P. Ws. 1 and 3 to swear falsely. P. W. 3 apparently misunderstood the provisions of Section 128 of the Act and gave wrong instructions forbidding the noting down of the serial numbers of the disputed ballot papers. The candidates and their counting agents are not precluded by the provisions of Section 128 of the Act or any other provision from noting down the serial numbers and other particulars of the disputed ballot papers at the time of the counting. It is rather unfortunate that P.W. 3 mis-construed the provisions of Section 128 of the Act and gave wrong instructions. I believe the evidence of P.Ws. 1 and 3 when they say that instructions were given to the candidates and their counting agents not to note down the serial numbers of the ballot papers. Consequently, the petitioner was prevented from noting down the serial numbers of the disputed ballot papers alleged to have been improperly received; but there was no bar to the petitioner to plead precisely the number of disputed ballot papers and the nature of his objections with refrence to each polling station. The explanation given in the evidence of the petitioner that he believed that he was forbidden to note down even the polling station numbers cannot be belived.

The main ground pleaded for recount is that despite an order for recount, the Assistant Returning Officer failed to scrutinize the ballot papers as he was required under law and therefore Rule 63 (5) has been contravened. The pleadings on that ground and the ground of reception of void votes are clear and do not lack adequate statement of material facts.

The next question is whether the petitioner has made out a *prima facie* case for inspection, scrutiny and recount

of the ballot papers of Respondent No. 1 in respect of the following nine polling stations:

	Polling Station No.	Name
1	5	... Kalenahalli
2	21	... Kothathi
3	22	... Kothathi
4	23	... Bevinahalli
5	25	... Cheeranaballi
6	26	... Guthalu
7	34	... Sunagahalli
8	35	... Bhoothanahosuru
9	36	... Thaggahalli

I will now deal with the four grounds urged in support of the petitioner's case.

His first ground is reception of void votes cast by impersonators. As stated earlier, on inspection it is noticed that only ten ballot papers were issued against the names of the dead voters mentioned in Schedule 'E' to the election petition. Out of the said ten ballot papers, four ballot papers were issued in Polling Station No. 25, three in Polling Station No. 21, two in Polling Station No. 24 and one in Polling Station No. 26. Since the margin of difference between the Petitioner and Respondent No. 1 is 89 votes, the reception of ten void votes, even assuming that all were cast in favour of Respondent No. 1, would not materially affect the result of the election, and therefore the fact that ten void votes have been cast and counted is not sufficient by itself to order inspection, scrutiny and recount.

The second ground is that there is discrepancy between the total number of ballot papers issued and the ballot papers found in the ballot boxes. Though in the election petition, the petitioner has stated that 52 ballot papers

have been unaccounted, both the learned counsel submitted after examination of Exhibits P-39 to P-110 that only 7 ballot papers were unaccounted. It is not the petitioner's case that any ballot papers cast in the ballot boxes were not counted. It is quite possible that when about 46,000 voters have cast their votes, 7 voters might have carried away the ballot papers without putting them into the ballot boxes intended for that purpose. I am unable to understand as to how the discrepancy of seven ballot papers is a ground for inspection, scrutiny and recount.

The third ground urged is that at the recount there was only physical recount done but not scrutiny as required by law. Though the petitioner has pleaded in his election petition that at the recount there was merely physical recount but no scrutiny and no opportunity was given to the counting agents of the petitioner to raise objections, Respondent No. 1 has not denied the said averment. In paragraph 3 of the written statement this is what Respondent No. 1 has stated:

> "The petitioner as per Ex. A sought for the recount of rejected votes only on which the Returning Officer ordered to recount the same in addition to recount of valid votes of any booth if demanded. Therefore the order is restrictive. The petitioner did not demand the recount of any valid vote of any booth. Consequently there was no necessity to recount the valid votes of all or any of the booths. The Returning Officer was right in not recounting the valid votes of all or any of the booths in the absence of specific demand from the petitioner. The recount was done according to law."

From the above pleading of Respondent No.1 it is clear that his case is that there was no demand for recount of the valid votes of any booth and therefore the Returning Officer was justified in not recounting the valid votes of all or any of the booths. Respondent No. 1 in his evidence has stated

that he signed the written statement with the knowledge that the statement made in paragraph 3 of his written statement was not correct. The evidence of R. Ws. 1 to 3 was to the effect that at the recount the valid votes of the candidates were properly scrutinised and no objections were raised by the counting agents of the petitioner. Respondent No. 1 is bound by his pleadings. He did not suggest to the Petitioner and his witnesses that there was no recount at all or that the Petitioner did not demand a recount of the valid votes. Since Respondent No. 1 has not disputed the averments made in the election petition that there was merely physical recount but not scrutiny of the ballot papers, the Petitioner's case has to be accepted.

The learned counsel for the Petitioner argued that the declaration of the result was made on the basis of the recount and when the recount was not done in accordance with Rule 56, there is contravention of Rule 63 (5) read with Rule 56, and the Petitioner is entitled to the recount.

Though the petitioner has succeeded in establishing that there has been non-compliance of the provisions of Rule 63 (5) read with rule 56, in order to succeed, he has to further establish that non-compliance of the said Rules has materially affected the result of the election. The petioner has led no evidence to show that non-compliance of the provisions of Rule 63 (5) read with Rule 56 has materially affected the result of the election. The ground of non-compliance of the provisions of the said Rules has been urged only in support of the Petitioner's case for inspection, scrutiny and recount. Mere non-compliance of the provisions of Rule 63 (5) read with Rule 56 does not entitle the making of an order for inspection, scrutiny and recount. As stated earlier, the Court has to be satisfied that in order to decide the dispute between the parties regarding the reception of disputed votes and to do complete justice between the parties, inspection of ballot papers is necessary. The dispute between the parties is whether any invalid ballot papers have been received for Respondent No. 1 despite the objections of the Petitioner. When the Petitioner

applied for recount his grievance was only with regard to the rejection of his valid votes and no ground was urged that any invalid votes were improperly received for Respondent No. 1. Exhibit P-128 is the Petitioner's application to the Returning Officer for recount. That application reads:

"To

The Returning Officer,

Srirangapatna Constituency,

PANDAVAPURA.

Application under Section 63 (2) of the Conduct of Election Rules of 1961.

Sir,

I am a candidate for the Sreerangapatna Assembly Constituency. The returns of elections counting held on this day which is completed by 12-45 A.M. to-day (23-2-1967) is as follows:

1.	Sri Dodda Bore Gowda	....	13882
2.	Myself (A.C. Srikantaiya)	....	13794
3.	Sri A. S. Bandisiddegowda	....	9651
4.	L. Narasimha Swamy	....	4331
	The number of invalid votes	....	4303

As per the returns furnished the difference between myself and Sri Doddaboregowda is only 88. I feel doubt about the discretion used by the concerned authorities to invalidate the above number of votes. I am confident that I will get more valid votes if a recount is made, further there is—every likelihood of my success.

Therefore, I request you to with-hold the result and order for complet recount afresh.

I am prepared to deposit the necessary amount.

Yours faithfully,

(Sd.) A. C. Srikantaiya,

Sreerangapatna,
23-2-1967.

On the said application the Ruturning Officer made his order for recount which is Exhibit P–129. That order reads :

"PROCEEDINGS OF RETURNING OFFICER SREERANGAPATNA ASSEMBLY CONSTITUENCY.

No. ELN. 70/66-67, Dated 23rd February 1967

Read :

1. Application dated 22 February 1967 by Sri A. C. Srikantaiya, contesting candidate for Sreerangapatna Assembly Constituency requesting for a recount of votes.

2. Objection petition of Sri A. S. Bandisiddegowda, Sri L. Narasimha Swamy and Sri B. Doddaboregowda, other contesting candidates of the Sreerangapatna Assembly constituency objecting to the recount.

ORDER.

After a careful examination of all aspects of the matter, a recount of the invalid votes is ordered at 11-30 A.M. on 23-2-1967 in the Taluk Board Office, Sreerangapatna as per Section 63(3) of the Conduct of Election Rules, 1961, as the margin of votes between the Petitioner Sri A. C. Srikantaiya and Sri B. Doddaboregowda is small. If any of the candidates or his agent wants the recounting of the valid votes also in respect of any polling station, the same is also ordered to be done.

There will be ten tables for the recounting of these votes and the candidates are permitted to appoint one agent for each counting table and one extra agent in addition to the candidates.

H. Basaviah,
Returning Officer, 23/2
Sreerangapatna Assembly
Constituency."

Copy to all the contesting candidates Srirangapatna Assembly Constituency for information.

It will be seen from Exhibit P-129 set out above that the Returning Officer has given no reason for allowing recount of the valid votes of the candidates when the ground urged in the application was only for recount in respect of the rejected votes.

H. Basavaiah,
Returning Officer, 23/2
Sreerangapatna Assembly
Constituency."

Rule 69(2) states:

"..... .....

a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the returning officer to recount the votes either wholly or in part, stating the grounds on which he demands such recount."

Sub-Rule (3) of Rule 63 states:

"On such an application being made the returning officer shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable."

Sub-Rule (4) states:

"Every decision of the Returning Officer under sub-rule (3) shall be in writing and contain the reasons therefor."

In the instant case there was no application in writing made to the Returning Officer to recount the valid votes of the candidates. Ext. P-129 states that if any of the candidates or his agent wants the recounting of the valid votes also in respect of any polling station, the same is also ordered to be done. There is no application in writing made by any candidate for recount of the valid-votes in respect of any polling station. The petitioner has stated in his evidence that he orally asked for recount of the valid votes. When the law requires an application in writing to recount the votes, the Returning Officer had no jurisdiction to order recount of the valid votes in the absence of written application. The only reason given in Ext. P-129 for allowing recount is the small margin of difference. P. W. 3 has also stated in his evidence that was the only reason for allowing recount. A small margin of difference by itself is not a sufficient

ground for allowing recount under Rule 63. According to the first count, the margin of difference was 83 votes between the petitioner and Respondent No. 1. Exhibit P-128 does not purport to be an application for recount of all the ballot papers from all the booths; by the said application the petitioner sought merely scrutiny and recount of the rejected ballot papers. The Returning Officer P. W. 3 also understood the Petitioner's application as one for recount of the rejected ballot papers and that is clear from a perusal of his order Exhibit P-129 that the Petitioner had not made even an oral application as stated by him, for recount of the valid ballot papers. P. W. 3 by his order gave an open offer to recount the valid ballot papers if any of the candidates desired. Such an order is not contemplated by the law. Even after P. W. 3 made such an order there was an application in writing by the Petitioner or any other candidate for recount of the valid ballot papers. There is also no order in writing directing recount of the valid ballot papers. Taking advantage of the order in Exhibit P-129 the petitioner appears to have orally asked for recount of the valid ballot papers and that request was orally granted by P. W. 3. Under Rule 63 referred to earlier, an order for recount has to be made in writing and it must contain the reasons therefor. There being no order in writing for recount of the valid ballot papers, there was no legal order for recount of the valid ballot papers and therefore the Petitioner can have no grievance if the said ballot papers were not scrutinised and there was merely physical recount. In my opinion, the Petitioner is taking advantage erroneous order made by P. W. 3 and seeking recount with a view to fish out materials in support of a general plea set out in the election petition that there was improper reception of about 1,500 ballot papers. In the circumstances of the case the failure to scrutinise the valid ballot papers and recount does not justify an order for inspection, scrutiny and recount in this election petition.

The last ground urged is that there was improper reception of about 1,500 invalid votes in favour of Respondent No. 1. As stated earlier the petitioner has given up his case that there was improper rejection of about 1,000 valid ballot papers of his. It is stated in subparas 3, 4, and 5 of para IV of the election petition that 4,700 ballot papers which should have been rejected under clauses (b) (c) and (d) of sub rule (2) of Rule 56 have been improperly accepted in favour of Respondent No. 1. But according to the allegations contained in para III (b) of the election petition objections were raised in respect of about 1,500 invalid ballot papers improperly accepted in favour of Respondent No. 1. In sub-para (c) of para III, the petitioner has alleged that the total number of the ballot papers in respect of which objections were raised by the Petitioner and his counting agents amount to about 2,500. In his evidence the petitioner (P. W. 8) has stated that objections were raised to the reception of about 1,500 invalid ballot papers. The inconsistency between the allegations in paras III and IV of the election petition as to the number of invalid ballot papers alleged to have been improperly received, has not been explained at all. The petitioner has also not explained how he has arrived at the figure of 1,500 votes. It is not his case that any record was maintained by him or his counting agents concering the disputed ballot papers.

The evidence of the petitioner and his counting agents P. Ws. 2 and 7 is to the effect that objections were raised at the time of sorting when the counting supervisors put invalid ballot papers in the tray reserved for Respondent No. 1, but the counting supervisors disregarded the said objections saying that the petitioner or his counting agents may raise the objections at the close of the count and further, that the petitioner complained to the Returning Officer who also told him that he can raise his objections

at the end. This is what the petitioner as P. W. 8 has stated :

"I was present through out the counting. I was moving about and listening to my counting agents regarding the complaints they had. My counting agents complained that the counting supervisors were putting in the trays of R-1 ballot papers which ought to go to the doubtful trays, despite their objections. I also observed that invalid ballot papers were put in the trays of R-1. I complained orally to the R. O. He told me that I may raise all objections at the conclusion of the counting and that I should not disturb during the progress of the count. To the best of my knowledge, about 1,500 invalid B. papers were included in the trays of R-1. The counting Supervisors stated that they were instructed to treat as valid those B. papers where one cross mark is clear. As counting of each polling station was over, the ballot papers from each counting table were sent to the A. R. Os. table with the Form 16 account. The A. R. O scrutinised the ballot papers contained in the doubtful bundle and decided what are valid ballot papers and what are invalid. I was present when the A. R O. scrutinised the ballot papers, I contended that about 1,500 ballot papers treated as invalid for me were valid and ought to be taken into account in my favour. With respect to the valid ballot paper bundles of the candidates, the A. R. O. verified the correctness of the number in respect of all bundles. I asked the A. R. Os to scrutininse the valid ballot paper bundles to see whether they contained invalid ballot papers. That request was rejected. The A. R. Os told me that I may give my objection at the end of the count in writing,"

The petitioner's case as alleged in his pleadings is different from what he has stated in his evidence. This is what he has pleaded para III (b) of the election petition:

> "The counting commenced on 22nd February 1967 at about 9 A.M. after the completion of the preliminary work and was completed at about 1 A.M. on 23rd February 1967. The work of the scrutiny and counting of the votes was done mainly by Sri Nanjunda Rao, Assistant Returning Officer, assisted by his subordinate officials. The Returning Officer Sri B. Basavaiah was mainly attending to the counting of the Parliamentary Constituency. The Assistant Returning Officer, Sri Nanjunda Rao, as well as the subordinate members of the staff were so much tired and exhausted that it was humanly impossible to bestow their best care and attention in regard to the work of scrutiny and counting of the votes. Whenever objections were raised by the Petitioner and his Polling Agents, they were either ignored or summarily rejected without bestowing any thought or attention. This was mainly due to the officials having overworked and strained themselves the previous day in respect of the counting and scrutiny of the votes pertaining to Pandavapur Constituency. If only the objections raised by the Petitioner and his Polling Agents were considered by the Assistant Returning Officer and if only they had applied their mind a little carefully, they would have certainly declared nearly 1600 votes as valid and counted them in favour of the Petitioner which have now been rejected as being invalid votes. Likewise about 1500 votes which have gone in favour of Respondent No. 1 would have been rejected as being invalid if only the objections raised by the Petitioner and his agents were considered and if only the A.R.O. had applied his mind to those ballot papers with care and caution".

The petitioner has not alleged in his election petition that he had asked the assistant Returing Officers to scrutinise the valid ballot paper bundles which request was rejected and they told him to give his objections at the end of the count in writing and further that the Assistant Returning Officers merely varified the correctness of the number of ballot papers contained in the bundles sent up by the counting Supervisors. If the Assistant Returning Officers has failed to scrutinise the valid ballot paper bundles sent up by the counting supervisors after sorting, it is a serious dereliction of duty and the petitioner would not have failed to mention the same in his application for recount and also in the election petition. The Petitioner's evidence that the Assistant Returning Officers did not scrutinise the valid ballot paper bundles sent up by the counting supervisors is patently false as could be seen from the Form No. 16 accounts exhibits P-39 to exhibit P-110. Form No. 16 accounts according to the evidence were filled up by the counting supervisors in respect of each polling station after sorting the ballot papers of that particular polling station. Form No. 16 account and the ballot papers duly sorted were sent by the counting supervisors to the table of the Returning Officer for scrutiny. The scrutiny was done by the Assistant Returning Officers. It is admitted that the doubtful ballot papers were serutinised by the Assistant Returning officers after giving an opportunity to the candidates to have their say. According to the petitioner's evidence, the Assistant Returning Officers merely verified the number of ballot papers contained in the valid ballot papers bundles of the candidates and they did not scrutinise them to see if they contained invalid ballot papers. Exhibits P-48, P-61, P-68, P-71, P-75, P-86, P-87, P-99 and P-109 are the form No. 16 accounts relating to polling station Nos. 10, 23, 30, 35, 37, 48, 49, 61 and 71 respectively. These ballot paper accounts show that some of the ballot papers contained in the valid ballot paper bundles of the candidates were rejected as invalid votes after scrutiny by the Assistant Returning Officers. From Exhibit P-48

it is seen that the total number of doubtfull ballot papers sent by the counting supervisor was 60 and that the valid ballot paper bundle of Respondent No. 3 contained 73 ballot papers; one out of the said 73 ballot papers on scrutiny was rejected by the Assistant Returning Officer. From Exhibit P-61, it is seen that two ballot papers contained in the bundles of Respondent No. 1 were rejected as invalid on scrutiny. Exhibit P-68 shows that three ballot papers of Respondent No. 1 and one ballot paper of Respondent No. 3 were rejected after scrutiny. Exhibit P-71 shows that four ballot papers of Respondent No. 1, one ballot paper of Respondent No. 2 and three ballot papers of the petitioner were rejected after scrutiny. Exhibit P-75 shows that five ballot papers of Respondent No. 1, one ballot paper of Respondent No. 2 and two ballot papers of the petitioner were rejected after scrutiny. Exhibit P-86 shows that two ballot papers of Respondent No. 3 were rejected after scrutiny. Exhibit P-87 shows that one ballot paper of Respondent No. 2 and one ballot paper of Respondent No. 3 were rejected after scrutiny. Exhibit P-99 shows that one ballot paper of the petitioner was rejected as invalid after scrutiny. Exhibit P-109 shows that one ballot paper of the petitioner was rejected after scrutiny. Thus, a perusal of Exhibits P-39 to P-110 shows that the ballot papers were scrutinised by the Assistant Returning Officers and the evidence of the petitioner in this regard is palpably false.

The non-mention of any improper reception of votes and a prayer for scrutiny of the valid ballot papers in the petitioner's application Exhibit P-128 for recount is also significant. If as stated by him in his evidence that the Assistant Returning Officers had told him that he may give his objections in writing at the end of the count. he would not have failed to state in Exhibit P-128 that a large number of invalid ballot papers were improperly accepted for Respondent No. 1 and that he claims scrutiny and recount of the said ballot papers.

The petitioner has prayed for recount of the valid ballot papers of Respondent No.1 in respect of nine polling stations

specified in para IV (13) of the election petition. P.W.1 Shivappa was the counting Supervisor at Table No. 5 at the original count. The ballot papers from polling stations Nos. 5, 25 and 35, besides some others, were sorted by P.W.1 at Table No.5. P.W.1 has stated that whenever the counting agents raised any objections, he put the ballot papers concerned in the doubtful tray and that it is only when there was no objection by any of the candidates that he put the ballot papers in the tray of the candidates. P.W.1 also was one of the counting supervisors at the recount.

He has stated that at the time of recount he did not notice any doubtful ballot papers. Nothing is suggested as to why I should not believe the evidence of P.W.1. The petitioner has not examined his counting agent at table No .5. Apart from the interested testimony of the petitioner there is no evidence to support his case that any doubtful ballot papers were put in the tray of Respondent No.1 at Table No. 5 when the papers received from polling station Nos. 5, 25, 35 were sorted. The ballot boxes from Polling Station No.22 was opened at Table No .2. The petitioner's counting agent at Table No .2 at the time of the first count has not been examined. Respondent No. 1 has examined his counting agent as R.W.1 who has stated that no doubtful ballot papers were put in the tray of Respondent No. 1.

The ballot boxes from Polling Section Nos. 21, 26 and 36 were opened and the ballot papers were sorted at Table No. 1. P.W.2 was the petitioner's counting agent at the said table. He has stated that he had raised objections to some of the ballot papers put in the tray of Respondent No.1 and the counting supervisor had disregarded his objections in respect of about 500 ballot papers in all. The counting Supervisor at Table No.1 was one Keshava Murthy, Head Master of the Municipal High School, Sreerangapatna. P.W.2 is the secretary of the Managing Committee of that School. No bias is alleged against the counting Supervisor Sri Keshava Murthy. P.W.7 was one of the counting agents of the petitioner at the original count as also recount. He

also supports the evidence of the petitioner. In his cross-examination he has admitted that he cannot give the polling station numbers regarding which he had raised objections at the original court. P.Ws. 2 and 7 have also not stated the nature of the objections they had raised. The petitioner has not alleged any bias or other ground tending to impeach the integrity of the counting officials. He has also not alleged that at the original count him self and his counting agents were denied the opportunity of examining the ballot papers. From the evidence I am satisfied that there was no irregularity in the first count and that the Assistant Returning Officers had scrutinised both the valid and doubtful ballot papers. None of the grounds urged by the petitioner are sufficient in my opinion to order inspection, scrutiny and recount of the ballot papers of Respondent No. 1.

My finding on Issue No. 1 is that the election petition contains adequate statement of material facts for scrutiny and recount of votes, but on Issue No. 2, I hold that the election petitioner has not made out a *prima facie* case for inspection, scrutiny and recount of the ballot papers. In view of my finding on Issue No. 2, the petitioner's prayer for inspection, scrutiny and recount of ballot papers is rejected. Consequent on the rejection of the petitioner's prayer for inspection, scrutiny and recount, Issue Nos. 3 and 4 have to be answered against the petitioner.

In the result the election petition fails and is dismissed with costs of Respondent No. 1. Advocate's fee Rs 250.

G. K. GOVINDA BHAT.
JUDGE.
20-10-1967.